

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:

FURR'S SUPERMARKETS, INC.,

Debtor.

Case No. 7-01-10779-SA

Chapter 7

**MOTION TO APPROVE SETTLEMENT OF
ADVERSARY PROCEEDING 02-1147-S
(Gruma Corporation d/b/a Mission Foods Service)**

Yvette Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, moves the Court for an order approving the settlement of all claims the estate has against Gruma Corporation d/b/a Mission Foods Service ("Mission Foods"), as set forth in the adversary proceeding No. 02-1147-S, captioned *Yvette J. Gonzales, Trustee v. Gruma Corporation d/b/a Mission Foods Service* (the "Adversary Proceeding"), pursuant to F.R.Bankr.P.9019, and in support hereof states:

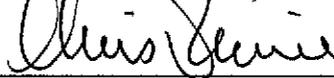
1. **Commencement and Conversion of Case.** On February 8, 2001, (the "Petition Date"), the Debtor filed a Voluntary Petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, this Court entered an Order converting the Chapter 11 case to a case under Chapter 7.
2. **Appointment of Chapter 7 Trustee.** On December 19, 2001, the United States Trustee appointed Yvette Gonzales as the Trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.
3. **Jurisdiction and Venue.** The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.
4. **The Adversary Proceeding.** In the Adversary Proceeding, the Trustee sought to recover Two Hundred Nineteen Thousand Four Hundred Twenty Three Dollars and 56/100

(\$219,423.56) from Mission Foods, plus all other amounts, if any, recoverable pursuant to 11 U.S.C. §547.

5. **The Settlement.** Mission Foods has offered to pay the Trustee One Hundred Seventy Nine Thousand Four Hundred Forty One Dollars and 93/100 (\$179,441.93), with \$179,441.93 to be paid immediately upon the entry of an Order approving the settlement. The full terms of the Settlement are set forth in the attached Settlement Agreement. The Settlement is fair and equitable, and in the best interests of and beneficial to the Debtor's estate and the creditors.

WHEREFORE, the Trustee requests that the Court enter an Order approving the Settlement and for such other relief as may be just.

DAVIS & PIERCE, P.C.



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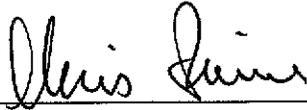
I hereby certify that a true and correct copy of the foregoing was mailed on December 23, 2003, to:

Keith Miles Aurzada, Esq.
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A handwritten signature in cursive script, appearing to read "Chris W. Pierce".

Chris W. Pierce, Esq.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

The parties to this Settlement Agreement and Mutual Release (hereinafter, "Agreement") are Yvette J. Gonzales, Chapter 7 Trustee in In re: Furr's Supermarkets, Inc., No. 7-01-10779 SA (the "Adversary Proceeding"), in the United States Bankruptcy Court for the District of New Mexico, for herself and on behalf of the Furr's Supermarkets, Inc. bankruptcy estate, and its or each of their current or former general partners, limited partners, officers, directors, stockholders, employees, attorneys, agents, servants, successors and assigns, spouses, heirs, executors, administrators, attorneys, and any and all other related persons, entities, associations or corporations, whether or not herein named or referred to (collectively, hereinafter, "Trustee" or "Plaintiff"), and Gruma Corporation d/b/a Mission Foods Service, and its current or former general partners, limited partners, officers, directors, stockholders, employees, attorney, agents, servants, successors and assigns, spouses, heirs, executors, administrators, attorneys, and any and all other related persons, entities, associations or corporations, whether or not herein named or referred to (collectively, hereinafter, "Mission Foods," or "Defendant").

WHEREAS on or about November 7, 2002, the Plaintiff filed her First Amended Complaint to Avoid Preferential Transfers, for Recovery and Turnover of Post-Petition Open Account Prepayments against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. Mission Foods Service*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 02-1147 S (the "Avoidance Action"), which caption was later amended to include Gruma Corporation d/b/a Mission Foods Service;

WHEREAS the Plaintiff and the Defendant desire to settle the Lawsuit and have agreed to execute this Agreement for such purpose and to extinguish the claims and obligations set forth

below;

NOW THEREFORE, it is agreed between the Plaintiff and the Defendant as follows:

1. Payment. Mission Foods agrees to pay Trustee the sum of \$179,441.93 in full and final settlement of the Avoidance Action. Payments shall be due and payable on the date of entry of Order Approving Settlement.

2. No Admission. It is understood and agreed that the release of Claims in this Agreement is the compromise of doubtful and disputed Claims, and that the payment and consideration given for the release of Claims should not be construed as an admission of liability on the part of any party to this Agreement. Each party denies liability to the others and intends merely to avoid litigation by buying their peace.

3. Release of Claims. The Trustee does hereby release and forever discharge Mission Foods, and Mission Foods does hereby release and forever discharge the Trustee, from any and all rights, claims, demands, damages, actions, causes of action and suits, of any kind or nature whatsoever, whether known or unknown, contingent or certain, developed or undeveloped, liquidated or unliquidated, now existing or hereafter arising (collectively, "Claims"), that each, individually or collectively, has now or might have in the future have against the other. The term "Claims" includes but is not limited to, those claims asserted or which could have been asserted by the Trustee or Gruma Corporation d/b/a Mission Foods Service in United States Bankruptcy Court for the District of New Mexico Adversary Proceeding No. 02-1147-S, entitled, Yvette Gonzales, Trustee, Plaintiff, vs. Gruma Corporation d/b/a Mission Foods Service, Defendant, provided, however, that nothing contained herein shall operate to waive or release any claims arising in connection with this Agreement and its enforcement, including without limitation the payments set out in Paragraph 1. above.

4. Trustee's Representations. The Trustee states that she is the proper party to assert the causes of action referred to above and all claims made in the Adversary Proceeding or otherwise released under this Settlement Agreement; that she has not assigned, pledged or otherwise transferred or encumbered any unasserted or asserted right, claim or cause or right of action against Mission Foods or any claim or cause of action that is released under this Settlement Agreement; that the person executing this Settlement Agreement for The trustee has the authority to act on her behalf for the purpose of which she purports to act and to bind her to the terms and conditions herein, and that she is the proper party to execute this Settlement Agreement.

5. Mission Foods' Representations. Mission Foods states that the person executing this Settlement Agreement for it has the authority to act on its behalf for the purpose for which he/she purports to act and to bind it to the terms and conditions herein; and that it is the proper party to execute this Settlement Agreement.

6. Choice of Law. This Agreement is entered into under the laws of the State of New Mexico. Any dispute concerning this Agreement shall be brought before the United States Bankruptcy Court for the District of New Mexico. If an action is filed to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorney fees.

7. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

8. Parties Bound. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors and assigns.

9. No Assignment. Each party to this Agreement acknowledges and represents that he, she, or it is the owner of the Claims released by this Agreement, and has not voluntarily or involuntarily assigned the Claims released by this Agreement to any other person or entity.

10. Time. Time is of the essence in the performance of the promises contained in this Agreement.

11. Neutral Interpretation. This Agreement shall not be construed against any party because the Agreement was drafted by that party.

12. Terms Contractual. The terms of this Agreement are contractual and not mere recitals.

13. Counterparts. This Agreement may be executed in counterparts, each of which, including faxed copies, shall be taken to be an original.

TRUSTEE

Yvette J. Gonzales
Chapter 7 Trustee for Furr's Supermarkets, Inc.

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

The foregoing Settlement Agreement and Mutual Release was acknowledged before me this ___ day of _____, 2003, by YVETTE J. GONZALES, Chapter 7 Trustee in Furr's Supermarkets, Inc., Debtor, Chapter 7 bankruptcy case, No. 7-01-10779 SA.

Notary Public

My Commission Expires: _____

GRUMA CORPORATION d/b/a
MISSION FOODS SERVICE

By:
Its:

